

## REQUEST FOR APPROVAL

**To:** Caroll Mortensen  
Director

**From:** Howard Levenson  
Deputy Director, Materials Management and Local Assistance Division

**Request Date:** Sept 16, 2014

**Decision Subject:** Consideration of Staff Recommendations Regarding Carpet America Recovery Effort's 2013 Annual Report

**Action By:** Sept 30, 2014

---

### **Summary of Request:**

Carpet America Recovery Effort (CARE) submitted the *Annual Report to California Department of Resources Recycling and Recovery (CalRecycle), January 2013 – December 2013, California Carpet Stewardship Plan* (hereafter referred to as the “2013 Annual Report”, see Attachment 1) on July 1, 2014. Staff recommends that the *2013 Annual Report* be found non-compliant, pursuant to the law for product stewardship for carpet (Public Resources Code sections 42970, 42975-76; and Title 14, Natural Resources--Division 7, Article 1.0, Sections 18942, 18944, 18945) because it does not meet the minimum requirements per regulations and because it is not clear that the Program is making continuous and meaningful improvement.

### **Recommendation:**

CalRecycle staff recognizes that improvements have been made to the Program and the annual report over the past reporting period, but concludes additional improvements must be made for the Program to meet statutory requirements. CalRecycle staff finds that:

- 1) the *2013 Annual Report* is non-compliant because it does not meet the minimum requirements per California Code of Regulations Section 18944 (see Attachment 2);
- 2) CARE is not making sufficient continuous and meaningful improvement toward the goals in the approved Plan, particularly with respect to the last seven quarters that show no gains in the recycling rate (see Key Issue #1);
- 3) exports cannot be counted towards achievement of the recycling rate (see Key Issue #2);
- 4) CARE uses definitions inconsistently and incorrectly in the *2013 Annual Report*, including the term Recycling (aka Recycled Output) that cannot include Carpet as an Alternative Fuel (CAAF) and carpet sent to kilns (see Key Issue #3);
- 5) CARE needs to include more complete information on collection, facilities and disposition (see Key Issue #5); and
- 6) surplus funds continued to grow, and that they instead could be used to support additional implementation efforts to achieve program goals (see Key Issues #4 and #6).

CalRecycle recognizes that the Carpet Stewardship Program has had only two full years of reporting, that recent facility closures have impacted market dynamics, and that data is

insufficient to definitively conclude that the Program will not achieve the Plan's goals. Therefore, CalRecycle staff recommend delaying any potential administrative action until the next annual report, and not requiring amendments to the deficient *2013 Annual Report*. This will allow CARE to devote more resources to program implementation in 2014. If the 2014 Annual Report fails to address the key issues summarized below and fails to address the deficiencies outlined in Attachment 2, *CalRecycle Detailed Comments on the 2013 California Carpet Stewardship Program Annual Report*, CalRecycle will consider administrative action to obtain compliance. The minimum requirements, as outlined in Attachment 2, are necessary to provide basic information needed to assess program progress and compliance with the law.

Additionally, CalRecycle staff prepared an overview of the program performance metrics (Key Issue #7; see Attachment 3: *CalRecycle Overview of the 2013 Metrics of the California Carpet Stewardship Program*) that consolidates information in one place and includes several corrections to what CARE provided in the *2013 Annual Report*. CalRecycle staff recommend posting this document on the CalRecycle website along with the *2013 Annual Report* to provide stakeholders with clarity on the Program's performance.

**Action:**

On the basis of the information, analysis, and findings in this Request for Approval, I hereby find the *Annual Report to California Department of Resources Recycling and Recovery (CalRecycle), January 2013 – December 2013, California Carpet Stewardship Plan*, submitted by CARE, dated July 1, 2014 to be non-compliant. I also direct staff to suspend administrative actions on the condition that the Program and the 2014 Annual Report addresses the key issues outlined in the RFA and the deficiencies outlined in Attachment 2, *CalRecycle Detailed Comments on the 2013 California Carpet Stewardship Program Annual Report*. Finally, I direct staff to finalize Attachment 3, *CalRecycle Overview of the 2013 Metrics of the California Carpet Stewardship Program*, with input from CARE, and post it on the CalRecycle website.

Dated: 9/16/2014

  
\_\_\_\_\_  
Carol Mortensen, Director

**Attachments:**

1. *Annual Report to CalRecycle, January 2013 – December 2013*; available at: <http://www.calrecycle.ca.gov/Carpet/AnnualRpts/2013/CAREDec2013.pdf>
2. *CalRecycle Detailed Comments on the 2013 California Carpet Stewardship Program Annual Report*; available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1306&aiid=1183>
3. *CalRecycle Overview of the 2013 Metrics of the California Carpet Stewardship Program* (prepared by CalRecycle, highlighting information from Annual Reports); available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1306&aiid=1183>

4. *California Carpet Stewardship Plan Revised*, January 2014, version 3.2.2.; available at: <http://www.calrecycle.ca.gov/Carpet/Plans/PlanJun2014.pdf>
  5. *CARE Response to Annual Report Feedback from CalRecycle*, November 19, 2013 available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1306&aiid=1183>
  6. *CalRecycle Response to CARE, Independent Audit section of Annual Report*, August 22, 2014 <http://www.calrecycle.ca.gov/Carpet/AnnualRpts/2013/CAREAug2013.pdf>
  7. *Selected Charts from 2013 Annual Report and 2014 Quarter One Update*, available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1306&aiid=1183>
- 

## **BACKGROUND**

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country. CalRecycle has responsibility to approve or disapprove carpet stewardship plans submitted by manufacturers or their designated product stewardship organization (PRC section 42973); review annual reports to verify that the objectives of the plan are being met (PRC section 42975); and provide oversight and enforcement to ensure a level playing field among carpet manufacturers (PRC section 42974 and 42978). For manufacturers to be in compliance, they must have an approved plan (PRC section 42973 (b)) (or be part of a stewardship organization with an approved plan) and demonstrate achievement of continuous and meaningful improvement in the rates of recycling and other goals included in an approved stewardship plan (PRC section 42975(a)). The statute provides for CalRecycle to impose civil penalties on any person who violates any provision of the Product Stewardship for Carpet law (PRC 42970 et seq, and specifically section 42978). The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute.

### **Approved Carpet Stewardship Plan**

The Director of CalRecycle approved CARE's California Carpet Stewardship Plan, titled, *California Carpet Stewardship Plan Revised, version 3.2.2* (hereafter referred to as Plan v3.2.2) in January 2014 (see Attachment 4).

### **First Annual Report**

On July 2, 2013, CARE submitted the Carpet Stewardship Program's first Annual Report titled, *Annual Report to CalRecycle, July 2011 – June 2013, California Carpet Stewardship Plan*. CalRecycle requested revisions to address deficiencies in the first Annual Report and CARE described how it would address CalRecycle's comments per a letter dated November 19, 2013 (see Attachment 5, *CARE Response to Annual Report Feedback from CalRecycle*).

### **2013 Annual Report Submittal and Review Timeline**

On July 1, 2014, CARE submitted the Carpet Stewardship Program's second Annual Report, titled, *Annual Report to California Department of Resources Recycling and Recovery (CalRecycle), January 2013 – December 2013, California Carpet Stewardship Plan* as required by PRC section 42976 (see Attachment 1). In addition to reporting on the results of the Program for 2013, the *2013 Annual Report* includes information about future activities

and programmatic direction, and an appendix with independent financial audit information. Appendix IV: *Audited Financial Statements*, prepared by the independent auditor, Winter & Scoggins, covers the *CARE 2013 Audited Financial Statement* (section 11.4.1) and *CA Carpet Stewardship Plan 2013 Audited Financial Statement* (section 11.4.2). As required by regulation, CalRecycle staff separately reviewed these audit reports and shared its findings in a letter sent to CARE on August 22, 2014 (see Attachment 6, *CalRecycle Response to CARE, Independent Audit section of Annual Report*).

## ANALYSIS

### CalRecycle Analysis of the 2013 Annual Report

**Overall finding:** The *2013 Annual Report* (Attachment 1) contains many of the required elements for an annual report that are described in statute and regulations, except as noted below and in the detailed comments (Attachment 2). However, the Program's achievement of continuous and meaningful progress, specifically its progress towards the recycling and other goals established in Plan v3.2.2 is insufficient as described below (see Key Issues). Therefore, rather than find the *2013 Annual Report* compliant when it and the Program have deficiencies, CalRecycle staff recommends finding the *2013 Annual Report* non-compliant but deferring administrative action so that CARE can address the key issues listed below. Response to the detailed comments must be addressed through program performance during 2014 and presented in the 2014 Annual Report and future reporting periods to avoid possible compliance actions. (See Attachment 2, *CalRecycle Detailed Comments on the 2013 California Carpet Stewardship Program Annual Report*).

CalRecycle staff believes it is important for CARE to focus on implementation in 2014 and is concerned about the slow startup for efforts to advance carpet recycling in California. CalRecycle is not requesting written comments from CARE in response to CalRecycle's comments in Attachment 2. The purpose of CalRecycle's detailed comments are to identify areas that must be addressed in future annual reports.

### Key Issues and Concerns Found in 2013 Annual Report

**Key Issue 1: The recycling and other program goals are not showing meaningful and continuous improvements. Improved program implementation is needed in 2014 and subsequent years.**

The California Carpet Stewardship Program started in July 2011 and has insufficient data points in 2013 to demonstrate and verify long-term trends. However, staff finds the following program goals, as defined in Plan v3.2.2 (see Attachment 4), are not yet achieving meaningful and continuous improvement, based on information in the *2013 Annual Report*:

- Increase the diversion and recycling (aka recycling output) of postconsumer carpet to achieve CARE's recycling goal of 16% by 2016 (See Attachment 7, *Selected Charts from 2013 Annual Report and 2014 Quarter One Update*).
- Increase the recyclability of carpet.
- Increase the reuse of post-consumer carpet.

- Increase the market growth of secondary products made with Post-Consumer Recycled Carpet Content (PCRCC).

#### Recycling Goal

CARE's ability to reach its recycling goal, established in the approved Plan v3.2.2, is a primary interest and concern to CalRecycle. While the *2013 Annual Report* showed an annual 2% gain from 10% recycling of post-consumer carpet discards in 2012 to 12% in 2013, it is not on course to achieve the 2016 goal of 16% by 2016. The increase in the recycling rate from 2012 to 2013 is due to an increase in the recycling rate that occurred in the second quarter of 2012 and the rate has not increased further. In the past seven quarters (Attachment 1, page 21) there has been a flat recycling rate of 12% (also see Attachment 7, *Selected Charts from 2013 Annual Report and 2014 Quarter One Update*).

Furthermore, the *2013 Annual Report* failed to include information on recycling capacity, as required, therefore, CalRecycle staff does not have information to determine if there is enough processing capacity to handle the growth in carpet recycling needed to achieve the goals (see Key Issue 5).

#### Recyclability Goal

The goal to increase the recyclability of carpet has received considerable focus by CARE, and several milestones are noted in the *2013 Annual Report* including a new incentive for companies making secondary products with non-nylon materials (referred to as Tier 2 incentives) and hiring a consultant to work on recyclability of polyethylene terephthalate (PET).

However, in the meantime there have been increases in non-nylon carpet sales over recent years, which results in higher collection of non-nylon post-consumer carpets, which typically are not recyclable. For example, CARE reports that nationally, PET carpet as a percent of the total collection stream climbed from 24% in 2012 to 34% in 2013.<sup>1</sup> Meanwhile sorted post-consumer nylon carpets decreased from 59% in 2012 to 52% in 2013.<sup>1</sup> Carpet recycling depends on post-consumer nylon carpet which has secondary markets for the nylon fiber and greater value to recyclers. Non-nylon carpets have very limited secondary market outlets and added costs of disposal. This shift away from nylon to non-nylon carpets may result in further closure of carpet processing facilities across the United States, several which process carpet from California. Considering the increases in non-nylon carpet sales and the slow progress towards finding options for recycling these carpets, it appears that in 2013, the overall recyclability of carpet may have decreased. CARE implemented Tier 2 incentives to advance production of secondary products made with non-nylon materials, which addresses recyclability, but it is too early to know if Tier 2 incentives will be effective.

#### Reuse Goal

The goal to increase the reuse of carpet, as reported in the *2013 Annual Report*, is moving in a negative direction. Reuse decreased in 2013, from 152,000 pounds in 2012 to 25,000

---

<sup>1</sup> CARE 2013 Annual Report, page 17. Available at: <https://carpetrecovery.org/wp-content/uploads/2014/04/CARE-2013-Annual-Report.pdf> Accessed on Aug 27, 2014. Note that this annual report is one for the entire national CARE program. There is a separate report that covers California.

pounds in 2013. CARE has indicated, in the Plan and in the 2013 Annual Report, that reuse of carpet tiles offers the best opportunity to reuse carpet, but does not report on activities in 2013 to increase reuse.

#### Market Growth of Secondary Products

CARE's effort to increase the market growth of secondary products made from PCRCC has been supported with the completion of a market survey to identify and document PCRCC products available in the marketplace and development of a draft brochure of these products. CARE also reports on activities underway in 2014, including hiring a consultant with expertise on state government procurement. It is too early to know the impacts of these activities.

#### **Key Issue 2: Exports do not count towards achievement of the recycling rate.**

CARE introduced the concept counting a portion of carpet exports toward the recycling rate calculation (see Attachment 1, *2013 Annual Report*, page 13), which will result in a higher recycling rate in future years. CalRecycle does not approve of including exports in the calculation of the recycling rate, for several reasons.

First, one of the key aspects of the Program is that it seeks to ensure that post-consumer carpet is managed in a manner consistent with California's hierarchy and California's waste management practices. Exporting materials and counting it as a recycling activity is not consistent with this program requirement. The State is able to audit the management of carpet within California, and to a lesser extent carpet managed domestically, through physical inspections and the use of documentation to ensure that good management practices are followed. Additionally, there is assurance domestically that waste will be transported and managed in an environmentally safe manner based on Federal Law. Arguments have been made that market forces assure that exported carpet will be diverted to the best possible use and therefore some recycling must occur. However, these assumptions based on commodity values are subject to fluid market dynamics and are not dependable metrics for ensuring accurate reporting on the actual disposition of materials sent abroad. It is noteworthy that currently, CalRecycle does have programs that track, to some extent, non-domestic recycling. However, producer responsibility programs are different from the other department programs and CalRecycle has more authority over what is permissible under an approved plan than it does regarding independent activities that are reported to it by external parties. In short, CalRecycle has a responsibility to provide for a level playing field among carpet manufacturers and recyclers and cannot determine if the management and final disposition of carpet managed outside of the United States is held to the same level of environmental protection and in accordance with California's waste management hierarchy.

Second, Assembly Bill 341 (Chapter 476, Statutes of 2011) established a new statewide goal of reducing, recycling, or composting 75 percent of the waste sent to landfills by 2020. CalRecycle's October 2013 interim report on strategies to implement this legislation focused on the development of a sustainable system that meets both the 75 percent goal and contributes to other societal objectives, including expanding manufacturing infrastructure and bringing green jobs to California, as opposed to relying on export markets. As such,

CalRecycle's focus is on growing the recycling sector and promoting manufacturing with recycled content at California facilities, thereby contributing to California's economic growth. CalRecycle recognizes the difficulty of doing so given the dynamics of commodity markets and of siting new manufacturing facilities, but it also does not wish to approve programmatic activities that provide an explicit policy incentive for exports.

The 2014 Annual Report and annual reports thereafter must report recycled output weights and present a recycling rate as a percent of California carpet discards that is specific to California and U.S. recycling activities. In summary, CalRecycle will not count California postconsumer carpets that are shipped overseas as recycled.

**Key Issue 3: Definition of Recycling (aka Recycled Output) is used incorrectly to include CAAF and Kiln. Several other definitions need clarity and to be used correctly and consistently.**

Statute, regulation, and Plan v3.2.2 provide approved definitions to use in Program reports. The key issue for CalRecycle is that the definition of Recycling or Recycled Output in these documents should not include forms of combustion, however CARE has included CAAF and Kiln in the calculation for Recycled Output. Including forms of combustion as recycled output is not consistent with definitions in Plan v3.2.2, nor with the goals of AB 341 with respect to source reduction and recycling. Combustion, whether via CAAF or kilns, must be removed from the calculation of Recycling and Recycled Output in California Carpet Stewardship Program documents and annual reports. Future annual reports must present and use approved definitions.

Additionally, other terms appear in the *2013 Annual Report* that are not formally defined in regulation, statute, the approved plan or subsequent approved annual reports (see Attachment 2). For example, CARE uses the term "Net Diversion" to refer to discarded carpet diverted from landfills, but this term does not appear in statute, regulations, or Plan v3.2.2. CARE uses the term "diversion target" to refer to the recycling "goal" which is an inconsistent use of terms. In another example, CARE uses the term "End-of-life" (EOL) to mean materials that are disposed in a landfill. This is contrary to the definition used by CalRecycle and many others. EOL means the point when a product is discarded by the consumer or the end of the useful life of the product, whichever occurs first. Using the latter definition, EOL would include recycling, reuse, energy recovery, and disposal. The 2014 Annual Report and annual reports thereafter, must use the terms as defined in statute, regulation and the approved plan; and use them consistently. If a term needs a definition and one is not contained in statute, regulation or an approved plan, then the definition that is commonly used shall apply and be included in the Annual Report. After the annual report has been reviewed by CalRecycle, and CalRecycle confirms that the new term is not in conflict with terms in statute, regulation or the approved plan, and it is approved as an amendment to the Program definitions in the approved Plan, then CARE shall add the term to

the list of Program glossary.<sup>2</sup> All key terms need to be clearly stated and consistently applied.

**Key Issue 4: Surplus funds continued to grow in 2013 (reported as \$4.9 million at the end of 2013).**

Plan v3.2.2 indicates that the net fund balance would peaked at \$4.1 million dollar in 2013, but the 2013 Annual Report indicates that the net fund balance at the end of 2013 was actually \$4.9 million. After 2013, as explained in Plan v3.2.2 CARE anticipates more use of the incentive funds, along with additional marketing, education, outreach and research, which is expected to draw down the surplus or net fund balance. CalRecycle recognizes that it is important to carefully consider how funds are spent. However some aspects of program implementation are progressing at a very slow pace, such as the recycling rate of post-consumer carpet discards. CARE may not achieve its goals within the timeframe specified without increased use of surplus funds and faster implementation.

**Key Issue 5: Need to provide more complete information on carpet collection, processing facilities, and disposition of materials during the reporting period.**

It is not clear which of the processors identified in the *2013 Annual Report* (page 12) are actively processing carpet at the end of 2013. The list of processors in the *2013 Annual Report* shows all the companies who requested funds since the Program started. The list does not indicate if they received funds nor does it explain which processors are actively processing carpet throughout 2013. CalRecycle staff is aware of the financial difficulties facing carpet processors in the United States and is concerned that the number of active processors and their capacity to recycle may have decreased in 2013 beyond what is apparent with the two identified closures.

Regulations specify that information on throughput and capacity must be included in the annual report. Information on throughput appears to be included through various metrics, but is not clearly identify as throughput to readers, while capacity information is missing in the 2013 Annual Report. At a minimum, the 2014 Annual Report, and annual reports thereafter, must do the following: clearly identify the throughput and capacity of carpet processing facilities managing California carpet (this information may be aggregated) in California and the United States at the beginning and end of the reporting period for all materials, and provide information on facilities for each disposition method (see Attachment 2). Information on total exports may be included as a category of disposition of carpet materials, but does not count towards recycling (see Key Issue 2).

**Key Issue 6: CARE reported minimal educational activities for the 2013 reporting year.**

After the Program start up, very minimal education and outreach has occurred.

---

<sup>2</sup> Definitions used in the California Carpet Stewardship Plan: Available at: <https://carpetrecovery.org/wp-content/uploads/2014/04/DefinitionsUsedInTheAB2398Plan.pdf>

Most of the outreach and education activities described in the *2013 Annual Report* occurred prior to 2013. The 2014 Annual Report, and annual reports hereafter, need to focus on activities that occurred during the reporting period and anticipated steps to improve performance.

Educational activities reported for 2013 include a new blog with 30 postings, printing and distribution of 600 brochures, and 4 presentations; target audiences specifically identified include retailers, manufacturers, rural counties, and to a lesser extent consumers. CARE added more information in the *2013 Annual Report*, as compared to the previous annual report, but more descriptive information is needed.

The Program's regulations call for methods by which to measure effectiveness of these activities and their accomplishments. Providing quantitative information on activities provides some indication of activity, but it does not address if the activities were effective. For example, a random survey of a target audience might show to what level the group knows about carpet recycling and are participating. Regulations also require electronic samples to be provided of educational materials during the reporting period and these were not included. Notably absent as a target audience are carpet installers and contractors, who handle discarded carpet and may be in a very good position to see that it is recycled.

In addition, CARE incorrectly included transportation costs in the total amount spent for education and outreach. Consequently, the *2013 Annual Report* does not contain correct financial information on education and outreach expenditures, nor did it provide the percent of total program costs spent on education and outreach, as required by regulations.

CalRecycle staff understands that future improvements in this category are likely, based on the Request for Proposal that CARE issued. By the end of 2014, this proposal should result in: market research; identification of key audiences and opportunities for engagement; key images, themes and messages for program and target audiences; and a template of educational materials; if implemented according to the schedule in the Request for Proposal.

#### **Key Issue 7: Metrics of Program Performance**

CalRecycle staff finds that a summary table of key program metrics makes it somewhat easier for stakeholders reading an Annual Report to better understand program performance. However, the *2013 Annual Report* uses incorrect definitions (see Key Issue 3) and introduces new terms (see Attachment 2) in *Table 1: Summary of Program Performance Metrics* (Attachment 1, Page 5). Therefore, CalRecycle staff prepared an overview of the 2013 program performance metrics (see Attachment 3) that consolidates information in one place and includes several corrections to what CARE provided in the *2013 Annual Report*.

#### **Other Issues: Lack of sufficient details regarding 2013 Program activities and performance results.**

The purpose of the annual reports is to report out on activities and accomplishments for an annual reporting period, and to further assess overall program performance along with

recommendations for future improvements in order to achieve Program goals. CARE needs to evaluate the overall effectiveness of program implementation in executing activities and achieving the goals as outlined in the Plan v3.2.2. If modifications and improvements are needed, CARE needs to incorporate recommended changes to the Plan v3.2.2 within the annual report and describe actions that will improve performance. For example, instead of a general statement of intention to make meaningful and continuous progress toward goals in *Section 3.4 Striving for Continued Improvement*, CARE needs to summarize and describe improvements that are underway or needed. Additionally, this section needs to provide an updated budget, if the budget has changed from the budget that appears in the approved Plan. Overall, CARE needs to provide sufficient details in the annual reports for CalRecycle to assess program performance. Some sections lack sufficient details and/or failed to meet the minimum regulatory requirements as outlined in Attachment 2. CARE should pay particular attention to the comments in Attachment 2 to ensure its annual reports can be approved in future years.

#### **Update on Financial Assurance.**

CalRecycle asked CARE to consider a mechanism to provide financial assurances in the event a liability is created and a processor is unable to resolve a situation. In Plan v3.2.2, CARE agreed to weigh options and finalize a position. CARE provided a letter dated July 1, 2014 that outlines what they considered. CalRecycle would like to further work with CARE to improve guidance, procedures, and communications on this topic and is preparing a separate letter to CARE with its comments.